

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICHARD UPPER,

Plaintiff,

- against -

BRAVADO INTERNATIONAL GROUP
MERCHANDISING SERVICES INC., UMG
RECORDINGS, INC. and RODERICK DAVID
STEWART

Defendants.

Docket No. 17-cv-6715

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Richard Upper (“Upper” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendants Bravado International Group Merchandising Services Inc. (“Bravado”), UMG Recordings, Inc. (“UMG”) and Roderick David Stewart (“Stewart” and together with Bravado and UMG “Defendants”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendants unauthorized reproduction and public display of a copyright photograph of British rock singer and songwriter Rod Stewart, owned and registered by Upper, a legendary professional music photographer. Accordingly, Upper seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendants because Defendants resides in and/or is transacting business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1331(b).

PARTIES

5. Upper is a renowned professional music photographer in the business of licensing and selling his photographs for a fee with a place of business at 4713 Halbrent Avenue, Sherman Oaks, California 91403. Upper's photographs have graced the front cover of albums for well known musical greats such as Carlos Santana and The Faces. Upper has photographed artists such as Chuck Berry, Eric Clapton, Elton John, Elvis Presley, Keith Richards, Rolling Stones, Tina Turner and Mick Jagger.

6. Upon information and belief, Bravado is a foreign business corporation duly organized and existing under the laws of the State of California, with a place of business at 1755 Broadway, New York, New York 10019. At all times material hereto, Bravado has owned and operated the URL: www.RodStewart.Shop.BravadoUSA.com (the "Bravado Website").

7. Upon information and belief, UMG is a foreign business corporation duly organized and existing under the laws of the State of Delaware, with a place of business at 1755 Broadway, New York, New York 10019. At all times material hereto, UMG has owned and operated the URL: www.RodStewart.com (the "UMG Website" and together with Bravado Website "Websites").

8. Upon information and belief, Stewart is one of the best selling music artists of all time. Stewart has sold over 100 million records worldwide and has had six number one albums in the United Kingdom, 62 UK hit singles and 16 top ten singles in the United States.

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photograph

9. Upper took an iconic photograph of Rod Stewart at the Los Angeles International Airport Baggage Claim (the "Photograph"). A true and correct copy of the Photograph is attached hereto as Exhibit A.

10. Upper is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

11. The Photograph has a pending United States Copyright Office application number of 1-5679328031.

B. Defendants' Infringing Activities

12. Upon information and belief, Defendants copied the Photograph and placed it on merchandise such as t-shirts and sold signed lithographs of the Photograph on the Websites (the "Merchandise"). True and correct copies of the Merchandise on the Websites are attached hereto as Exhibit B.

13. Upon information and belief, the signed lithographs are selling for \$350.00.

14. Upon information and belief, the plaid union jack 2015 t-shirts are selling for \$40.00 and \$28.00.

15. Upon information and belief, Defendants sold the Merchandise on Stewarts' 2014 and 2015 Tour.

16. Defendants did not license the Photograph from Plaintiff for its Merchandise or Websites nor did Defendants have Plaintiff's permission or consent to publish the Photograph on its Merchandise or Websites.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANTS)
(17 U.S.C. §§ 106, 501)

17. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-16 above.

18. Defendants infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on Merchandise and the Websites. Defendants are not, and have never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

19. The acts of Defendants complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

20. Upon information and belief, the foregoing acts of infringement by Defendants have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

21. As a direct and proximate cause of the infringement by the Defendants of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendants' profits pursuant to 17 U.S.C. § 504(b) for the infringement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendants be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. Plaintiff be awarded Plaintiff's actual damages and Defendants profits, gains or advantages of any kind attributable to Defendants infringement of Plaintiff's Photograph;

3. That Defendants be required to account for all profits, income, receipts, or other benefits derived by Defendants as a result of its unlawful conduct;
4. That Plaintiff be awarded pre-judgment interest; and
5. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
September 3, 2017

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